

Amherst City Council met in a Regular Session under full compliance of State Law with President Dietrich opening the meeting at 7:05 p. m. Roll call: Mrs. Wasilk, Mr. Winiarski, Mr. Dembinski, Mr. Miller –absent, Mr. Janik, Mr. Goodell, Mr. Van Treuren. Also present were Treasurer Ramsey, Safety/Service Director Jeffries, Mayor Costilow, Assistant to Law Director Carlson, Auditor Kukucka, members of the Public and the Press. Mr. Van Treuren motioned to excuse Law Director Pecora and Mr. Miller from this evening's meeting as they had letters on file. Seconded by Mr. Goodell. Voice vote 6-0 to excuse.

The Prayer was invoked by Chaplin Wasilk, followed by the Pledge to the Flag led by Sergeant at Arms Dembinski.

The Clerk read the Consent Agenda: Mr. Dembinski motioned to accept the Consent Agenda as read. Seconded by Mr. Winiarski. Roll call vote 6-0 to accept the Consent Agenda as read.

Acknowledgement of the public pertaining to items on the agenda: Mr. Dietrich said the public will be allowed to speak on the moratorium on mobile food units when we get to that subject on the Agenda. He welcomed and recognized Mr. Soto, owner of SMASH food cart.

#### **ORDINANCES AND RESOLUTIONS FIRST READING:**

(a) An Ordinance adopting a Capital Asset Policy for the City of Amherst.

Mr. Winiarski motioned to pass this on to its second reading. Seconded by Mr. Goodell. Roll call vote 6-0 to pass to second.

(b) An Ordinance amending Amherst Codified Ordinance Chapter 913, Section 913.04.

Mr. Goodell motioned to pass this on to its second reading. Seconded by Mr. Winiarski. Roll call vote 6-0 to pass to second.

(c) An Ordinance approving a contract with Amherst Township to create a Joint Economic Development District pursuant to Ohio Revised Code Section 715.70.

Mayor Costilow said he thinks the Township will pass their document tomorrow. He said it would be nice for us to pass this tonight, without the emergency clause. Mr. Van Treuren motioned to suspend all Council rules so that this may be passed in its first reading. Seconded by Mr. Goodell. Roll call vote 6-0 to suspend rules. Mr. Winiarski motioned to adopt. Seconded by Mr. Goodell. Roll call vote 6-0 to adopt. Becomes 0-17-30.

(d) An Ordinance to submit an application to the Ohio Public Works Commission for State Issue 1, Round 32 funds for the year 2018 for repairs and improvements for Lincoln Street and Sipple Avenue, and declaring an emergency.

Mr. Dembinski motioned to suspend all council rules so that this may be passed in its first reading. Seconded by Mr. Goodell. Roll call vote 6-0 to suspend rules. Mr. Winiarski motioned to adopt. Seconded by Mr. Goodell. Roll call vote 6-0 to adopt. Becomes 0-17-31.

(e) An Ordinance to set a moratorium with respect to the operation of mobile food units; and declaring an emergency.

Mr. Carlson said if the Council would desire further amendment, this would be the time to do so. Mayor Costilow said Dancing on Main Street will be coming up, and they already adhere to most of these regulations. This is a planned community event, our streets are closed, there is no traffic, the Fire Department does come in and inspect every unit. He asked that Council would exclude Dancing on Main Street from these regulations. Mr. Carlson said then we need to add item (l), This Ordinance shall not apply to Dancing on Main Street. Mr. Winiarski asked if Dancing on Main Street was a licensed event? Mayor Costilow explained the regulations they go through. Mr. Dembinski motioned to add Section (l) that this moratorium shall not apply to Dancing on Main Street. Seconded by Mr. Janik to amend to add item (l). Roll call vote 6-0 to amend. Mr. Winiarski motioned to suspend all Council rules so that this may be passed in its first reading as amended. Seconded by Mr. Goodell. Roll call vote to suspend rules. Mr. Dembinski motioned to adopt. Seconded by Mr. Goodell. *(Roll call vote 6-0 to adopt. Which happened after discussion, which Mr. Dietrich allowed at this time)*

Mr. John Kolcun, of 482 Lullaby Circle, thanked Council and city officials for working with them and it appears this is going in the right direction. Mayor Costilow said to be clear, last week was the spot they found that worked before the moratorium and that spot will be reviewed also. This may not be a permanent solution.

Ms. Peggy Sinibaldi of 167 Weschester said she is a business owner and said mobile food trucks are unique and bring something different into the community. She asked about the 15' regulation – was that from the building, or from the awning? Mayor Costilow it would be a permanent structure, so it would be the awning. She explained why she questioned this. Her other question is about the \$1,000,000 insurance, if other cities have lower insurance mandates, and Amherst is much smaller, why is Amherst's being set so high? Mayor Costilow said Cleveland has nine pages of regulations of requirements where we have just some very limited requirements. Ms. Sinibaldi felt that the food truck owner was being punished with this high insurance. Mayor Costilow explained the various situations that would call for this type of insurance coverage and that the citizens also need to be protected. Mr. Carlson said he has found the difference in cost of insurance when liability limits are changed may not be as great as one believes them to be. This will be discussed while the moratorium is in place. There is also a potential for significant loss to persons or to property as the result of an accident from one of these food trucks. He gave examples. Mr. Winiarski pointed out that we have very few free standing buildings. They are all connected. Smoke or fire has a great potential to go over to the next building. It's very compact in downtown. Ms. Sinibaldi feels the cost is still unfair and spoke further as this relates to Cleveland and other cities. Mr. Janik said the historic preservation of these buildings is very important. He said he knows for a fact that in Cleveland that the areas that the food trucks are in are not in such populated areas as our downtown. Many of them are in districts where there are no food restaurants around or very limited access to them. He feels the amount is fair. Mr. Van Treuren and Mayor Costilow discussed requirements established in Cleveland. Mr. Dembinski had felt that the million dollars was too high. But as they have been talking about this, he still feels that one million dollars is kind of high, but at the same time, it's a mobile food truck, so it's not always here in Amherst. As it travels to different cities, he imagines that they have different insurance requirements. Mr. Dietrich said anyone who is in business understands that one million dollars is peanuts. When it comes to buildings, medical and liability, one million dollars is nothing any more. Two people can get burnt around a food truck that million dollars is spent very quickly on medical bills.

Mr. Jenso Soto of 135 Cherry Valley Drive thanked Council and Administration for taking this into consideration. Safety is important to him and he will comply as much as he can so he can continue to operate in the city. He hopes this helps other businesses that do not serve food in their establishments. Down the road, other food truck should also be helpful to these businesses. He spoke to the variety of establishment in the City. He does not feel this is a just matter of competition, but businesses helping each other. Mr. Dietrich asked if Mr. Soto has been in any other towns. Mr. Soto said he was in Avon, Lakewood, and does most of his business in Lorain and he does carry one million dollars in liability insurance. He is quite aware of safety issues, as he has his parents helping him with the food truck and is aware of public being around the food truck. Mayor Costilow asked if he could compare us to other cities where he pulled up his food truck into a public parking spot and done business that's not a special event but rather during regular business hours? Mr. Soto said he works full time so he is very limited in when he does this and he has been in parking lots, but not parking spaces such as here. The events that he was at, were already sectioned off.

Mr. Chris Russo of 300 Church Street, said he also owns a food truck and also a brick and mortar. This a question of what direction the city is going in. There are times and places for food trucks such as Dancing on Main Street, and festivals in Lorain. There are so many events a food truck can go to, they don't have to be parked on streets for safety reasons. Mr. Soto also mentioned in liquor establishments, you have to have food. And if they are not happy with the food there, they can always get to go menus from the other establishments. The food can be delivered from these establishments. But every liquor establishment has to have food on the property, not just a food truck outside. He spoke about the inspections and safety features that are required by Zoning Board prior to opening up and it's an unfair advantage for a food truck to come in and leech and make a quick score and not pay taxes, etc. He has looked on line and for most cities, these ordinances are 500 feet away from buildings. There are reasons why these cities have so many rules and regulations regarding safety and competition. He spoke to the question of whose responsibility it is to clean up after the food trucks. Mr. Soto spoke and said he does not appreciate being called a leech

for the second time in a row. Mr. Soto and Mr. Russo had a discussion regarding the food truck situation.

Mayor Costilow asked if the food truck charges sales tax like a typical restaurant would. Mr. Soto said they are not required as this is considered a carry out. There was a discussion between Mr. Soto and Mr. Russo about the sales tax on these foods. Mr. Janik said last week Mr. Soto said the food truck was for allowing people to purchase food and take them into the establishments, and eating it in there, why are we not getting the sales tax? The discussion continued between several business owners and council people. Mr. Ramsey pointed out that the City does not collect sales tax, rather we collect income tax.

Mr. Carlson spoke to the future proposed legislation on food trucks and said these are things Council will have to address in the next few weeks. Mr. Van Treuren spoke to almost making a mistake when Mr. Bires first came to Council about opening his restaurant and he was opposed to it, and feels he does not want to make the same mistake, so is supporting the moratorium until there is further discussion on the permanent ordinance. Mr. Carlson said it seems to him that Council can go one of three ways – do nothing in which case this activity is unregulated, but not prohibited. Council can declare a moratorium which says that we will have none of this until legislation is in place, or do what we are proposing, to impose reasonable and common sense regulations until we figure out what we are going to do. The proposal before them is the last one that he mentioned.

Mr. Paul Bires of 209 S. Main Street, (resides on Oak Point Road in Lorain) said he had many things to discuss, some of which were already covered. He brought in healthy competition with his restaurant but also created a healthy environment. He feels this issue is not to do with competition, but with healthy environment. He reminded everyone that when he wanted to open his restaurant, he felt that Amherst is one of the most desirable places to be. He spoke about creating a healthy environment. He felt regulating food trucks is not only fair for food trucks, but fair for everyone else and this is taking us in the right direction. It is in the best of Amherst to do their due diligence and make this right. He spoke to liability insurance being where it should be and other factors to be considered.

Mr. Winiarski said this began with having no regulations and found out that the food trucks do need to be regulated. The next step is the consideration of the moratorium which we are considering this evening - putting some safety driven regulations into place as a temporary measure while we move into the next step, which can address economic issues and other things that we see in other communities. This is evolving and tonight we are limited to the requirement the law director gave us; that we can only focus on safety issues, which is what we have done. If this is adopted this evening, then we can move on and incorporate all the other issues that were discussed this evening. He gave Mr. Carlson a copy of our code, 741.02 which he thought was applicable. One of the things he heard earlier was that we did not have any regulations that were applicable. He spoke to a section of the code which refers to peddling and he asked the law offices, mayor and police department to review it. Mayor Costilow said they have looked at that, and one of the definitions is that this section refers to a peddler who carries his wares on him. The Law and Police Departments do not want to cross the line regarding anyone who keeps their items in a truck isn't necessarily carrying their wares on them from place to place. Mr. Carlson agreed with the Mayor and read the regulation and feels it applies to something else. Mr. Dietrich said he has spoken to the Mayor about this and came to the same conclusion. Mr. Van Treuren said he does not know this evening's discussion has anything to do with competition. If this creeps into the competition question in the legislation, he would be less likely to support it. Roll call vote 6-0 to adopt. Becomes 0-17-32.

#### **ORDINANCES AND RESOLUTIONS SECOND READING:**

- (a) An Ordinance re-appropriating funds in various accounts ; and declaring an emergency.

Mr. Goodell motioned to suspend all Council rules so that this may be passed in its first reading. Seconded by Mr. Winiarski. Roll call vote 6-0 to suspend rules. Mr. Winiarski motioned to adopt. Seconded by Mr. Goodell. Roll call vote 6-0 to adopt. Becomes 0-17-33.

#### **ORDINANCES AND RESOLUTIONS THIRD READING: None**

July 24

2017

Miscellaneous and acknowledgement of the public: The Clerk pointed out that all Council, Police Department and Administration received a copy of a notice from the Department of Commerce regarding their ability to object to any liquor permits in city establishments

Agenda requests and committee meeting schedules: There were no agenda requests presented.

Reports of the Administration:

Auditor Kukucka: Thanked Council for passing the ordinance for re-appropriating funds. He invited member of Council and Administration to the closing meeting regarding our audit.

Treasurer Ramsey: No report

Assistant to Law Director Carlson: No report

Safety/Service Director Jeffries: No report

Mayor Costilow: Reported the Street Repaving Program is coming along very well. They did advertise for bids for Elyria Ave which takes three weeks as it's state funded. Thanked Council for working on the food truck issue. Asked if anyone had ideas, to present them to himself or the Law Director. They will return this to Council for a permanent solution. Reminded Council that we will be busy in September and our rate consultant will be here the first committee meeting in September to speak to our electric rates.

Mrs. Wasilk motioned to accept Reports of the Administration. Seconded by Mr. Dembinski. Voice vote 6-0 to accept.

Mrs. Wasilk motioned that Council go into recess for the month of August, returning Tuesday, September 5. Seconded by Mr. Goodell. Mr. Dembinski stated that as a new member of Council he is aware there are many things going on. He is here to work so he opposes the vacation. Roll call vote 4-2 with Mr. Winiarski and Mr. Dembinski voting no.

Mr. Dembinski motioned to adjourn, seconded by Mr. Goodell. Voice vote 6-0 to adjourn. The meeting adjourned at 8:03 P. M.

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Olga Sivinski, Clerk of Council

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John S. Dietrich, President of  
Council